

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Han et al.

Patent No: 7,427,343 (Appl. No. 10/648,725, filed 08/25/2003)

Issued: 09/23/2008

For: ENTROPIC TRAPPING AND SIEVING OF MOLECULES

Examiner: Kaj K. Olsen

Art Unit: 1795

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Request for Reconsideration of Patent Term Adjustment
under 37 C.F.R. § 1.705(d)

SIR:

It is hereby respectfully requested that the Office reconsider the Patent Term Adjustment determined in the above-referenced U.S. Patent No. 7,427,343 and revise the Patent Term Adjustment to **1322 days**, which is believed to be the correct Patent Term Adjustment.

The bases for the revised Patent Term Adjustment are *Wyeth v. Dudas*, No. 07-1492 (D.D.C. Sept. 30, 2008), and the relevant dates, below, showing examination delay under 37 C.F.R. §§ 1.702(a) and 1.702(b) and the period of adjustment under 37 C.F.R. § 1.703.

	<u>Relevant Dates</u>	<u>Period of Adjustment</u>
Examination Delay under 37 C.F.R. § 1.702(a)	<p><i>37 C.F.R. § 1.703(a)(1)</i></p> <ul style="list-style-type: none">• Filing date of the application: <u>08/25/2003</u>• 14 months after the filing date of the application: <u>10/25/2004</u>• First action mailed: <u>01/17/2007</u>	Difference for which patentee should receive credit: <u>+ 814 days</u>
Examination Delay under 37 C.F.R. § 1.702(b)	<ul style="list-style-type: none">• Filing date of the application: <u>08/25/2003</u>• Three years from filing date of the application: <u>08/25/2006</u>• Issue date of patent: <u>09/23/2008</u>	Difference for which patentee should receive credit: <u>+ 760 days</u> minus 145 days of overlap with Examination Delay under 37 C.F.R. § 1.702(a) for a total of <u>615 days</u>
Circumstances under 37 C.F.R. § 1.704	<p><i>37 C.F.R. § 1.704(b)</i></p> <ul style="list-style-type: none">• Date Office Action or Notice mailed: <u>01/17/2007</u>• 3 months from date Office Action or Notice mailed: <u>04/17/2007</u>• Response filed: <u>05/17/2007</u> <p><i>37 C.F.R. § 1.704(b)</i></p> <ul style="list-style-type: none">• Date Office Action or Notice mailed: <u>07/05/2007</u>• 3 months from date Office Action or Notice mailed: <u>10/05/2007</u>• Response filed: <u>12/21/2007</u>	Difference for which § 1.702 period of adjustment should be reduced: <u>- 30 days</u> Difference for which § 1.702 period of adjustment should be reduced: <u>- 77 days</u>
Total		<u>1322 days</u>

Pursuant to the recent decision by the U.S. District Court for the District of Columbia in *Wyeth*, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 C.F.R. § 1.702(b) in addition to any examination delay under 37 C.F.R. § 1.702(a), to the extent that the two periods of delay “do not occur on the

same calendar day or days." A copy of *Wyeth* is attached hereto as "Attachment A" for the Office's convenience.

Thus, it is believed that the present patentee is entitled to credit for the sum of 814 days under 37 C.F.R. § 1.702(a) and 615 days under 37 C.F.R. § 1.702(b), for a total of 1429 days, subject to a reduction of 107 days under 37 C.F.R. § 1.704, for a **total Patent Term Adjustment of 1322 days**. Since part of the delay periods under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) occur on the same calendar day or days, from 08/25/2006 to 01/17/2007, 145 days have been subtracted from the Examination Delay under 37 C.F.R. § 1.702(b). The remainder of the delays under 37 C.F.R. §§ 1.702(a) and (b) do not occur on the same calendar day or days and should be credited.

The above referenced patent is subject to a terminal disclaimer.

This Request is timely filed under § 1.705(d) because it is being filed within two months of the date the above-referenced patent issued, September 23, 2008, and it does not raise an issue that was raised or could have been raised in an Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b). The issue raised herein is a result of *Wyeth*, issued September 30, 2008, after the issue fee was paid for the present patent on July 28, 2008.

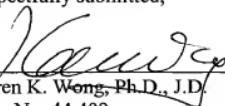
Please revise the Patent Term Adjustment as set forth above and charge the fee required by 37 C.F.R. § 1.18(e) estimated to be in the amount of **\$200.00** to Wilson, Sonsini, Goodrich & Rosati Deposit Account No. 23-2415 (Docket No. 33205-709-401).

If the Office deems the Patent Rules to be inapplicable to the present Request, however, then in view of the extraordinary situation presented by *Wyeth* it is respectfully requested that the Office (a) consider suspending or waiving the Rules *sua sponte* presented by *Wyeth* and grant the Request for Reconsideration of Patent Term Adjustment set forth herein or (b) treat the Request for Reconsideration of Patent Term Adjustment instead as a Petition under 37 C.F.R. § 1.183, charge the accompanying petition fee under 37 C.F.R. § 1.17(f) estimated to be in the amount of **\$400.00** to Wilson,

Sonsini, Goodrich & Rosati Deposit Account No. 23-2415 (Docket No. 33205-709.401)
and grant the Request for Reconsideration of Patent Term Adjustment set forth herein.

Respectfully submitted,

Dated: November 24, 2008

By: 
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